

# Notice of Allowability

Application No.

09/779,596

Examiner

Kathleen M. Kerr

Applicant(s)

NEESER ET AL.

Art Unit

1652

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3/14/05.
2. ☒ The allowed claim(s) is/are 29-38.
3. ☒ The drawings filed on 09 February 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
Kathleen M Kerr  
Primary Examiner  
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## **DETAILED ACTION**

### ***Application Status***

1. In response to the previous Office action, a Final rejection (mailed on January 13, 2005), Applicants filed an after-final amendment received on March 14, 2005. Said amendment cancelled Claims 1, 3, 4, 6, 7, 9, 10, and 23-28. Thus, Claims 29-38 are pending in the instant Office action and will be examined herein.

### ***Priority***

2. As previously noted, receipt is acknowledged of papers (EP 98202707.0) submitted under 35 U.S.C. § 119(a)-(d), which papers have been placed of record in the file. Thus, the instant application is granted the benefit of priority for the foreign application 98202707.0 filed in Europe on December 8, 1998 as requested in the declaration. Priority is also granted, as previously noted, to the parent application, PCT/EP99/05473 filed on July 26, 1999.

### ***Withdrawn – Objections to the Specification***

3. Previous objection to the amendment filed October 7, 2004 under 35 U.S.C. § 132 because it introduces new matter into the disclosure is withdrawn by virtue of Applicant's amendment removing said new matter.

### ***Withdrawn - Claim Rejections - 35 U.S.C. § 112, second paragraph***

4. Previous rejection of Claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite for the term "of dairy origin" is withdrawn by virtue of Applicant's cancellation of said claim.

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***Withdrawn - Claim Rejections - 35 U.S.C. § 112, first paragraph***

5. Previous rejection of Claims 1, 3, 4, 6, 7, 9, 10, and 23-28 under 35 U.S.C. § 112, first paragraph, written description, is withdrawn by virtue of Applicant's cancellation of said claims.

***Conclusion***

6. Claims 29-38 are allowed in the Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M. Kerr whose telephone number is (571) 272-0931.

The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr  
Primary Examiner  
Art Unit 1652

April 7, 2005